



# Rights of Juvenile Offenders

**Indiana Close Up  
A Jefferson Meeting  
on the Indiana Constitution**



Issue Book Number 6



## Thank you

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**The Jefferson Meeting format requires analysis, critical thinking, public speaking, and cooperative work by participants no matter their level of ability. The Meeting links the Constitution with issues currently in the spotlight and has been called a history lesson with a focus on the present and a civics lesson with historical perspective.**

**The Jefferson Foundation is located at 1529 18th Street, N.W., Washington, D.C. 20036; telephone 202-234-3688.**

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## Availability

Copies of this publication are available from the Indiana Historical Bureau, 140 North Senate Avenue, Room 408, Indianapolis, Indiana 46204-2296. Call for details: 317-232-2535/TDD 317-232-7763/FAX 317-232-3728.

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## Disclaimer

This issue essay should be used as an educational aid to encourage discussion and study. It is not a complete revelation of the current law. The legal issues referred to are far more complex than we are able to address in this format.

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Juvenile offenders should have the same rights as adult offenders under the Indiana Bill of Rights.

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## The Issue

- Constitution of Indiana

Article I, Section 9. (Freedom of speech). No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print freely on any subject whatever: but for the abuse of that right, every person shall be responsible.

Article I, Section 11. (Search warrants). The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated: and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Article I, Section 13. (Rights of criminal defendants). In all criminal prosecutions, the accused shall have the rights to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

- United States Constitution

Fifth Amendment. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

## Relevant Constitutional References

Seventh Amendment. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

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## Historical Context

The U.S. Constitution was ratified in 1787. The first ten amendments, called the Bill of Rights, were ratified in 1791. Most of the original thirteen colonies had bills of rights with their constitutions when they formed the Union. Each new state which entered the Union had a constitution. Indiana's original 1816 constitution included a Bill of Rights of 24 sections in Article I. The 1851 Indiana constitution contains 37 sections in Article I, known as the Bill of Rights, and gives more rights to citizens than the federal Bill of Rights.

The rights enshrined in the U.S. Bill of Rights are considered so fundamental, nearly sacred, that they were spelled out as protections to citizens from encroachment by the federal government. State constitutions likewise protected the rights of citizens from encroachment by state government.

The rights enumerated in the U.S. Bill of Rights are connected by the thread of "natural rights" to Roman times. The concept of "natural rights" assumes that all humans are born with certain rights that cannot be transferred or taken away.

Some of these rights are specified in the Magna Carta in 1215 A.D., the English Bill of Rights in 1689, and the United States Declaration of Independence, Constitution, and Bill of Rights.

Juvenile offenders and the protection of their civil rights have presented a unique challenge to the courts. The guiding principle of United States law has been *parens patriae*. This principle, established in medieval English law (Kadish, 3:962), allowed the Crown, i.e., the government, to intervene into family life when the welfare of the child was in question. By the nineteenth century, every state in the United States had incorporated this principle into its legal system.

The first juvenile court was established in Chicago in 1899 with the help of social reformer Jane Addams. The courts were to serve as a school to teach juveniles proper behavior. Officials were to be advocates for youth for their protection. Protection and guidance were judged to be more important concerns than due process guarantees.

In these special juvenile courts, juveniles were charged with no specific crimes, regardless of how serious their activities were. Since no specific charges were brought, the civil liberties of the juvenile were often not protected. What we consider the "due process" freedoms—the right to face one's accusers; a fair and speedy trial; right to a lawyer; no self-incrimination; jury of one's peers—were nonexistent for the accused juvenile. The justice resulting from this protection has come into question.

Several court cases reinforced the principle of *parens patriae*, both at the state and federal levels, until *In re Gault* (1967). Gault, a

15-year-old boy, had been sent to a state boys' school for allegedly making obscene telephone calls. This landmark Supreme Court decision “. . . declared that juveniles have a right to a written notice of any proceeding that might result in confinement; a right to counsel, provided by the state for indigents; a privilege against self-incrimination, and a right to confront and cross-examine all witnesses. . . .” (Kadish, 3:979).

These rights have also become a part of Indiana law. The *Indiana Code*, Title 31, Article 6, Chapter 3, entitled “Rights of Persons Subject to Juvenile Court Jurisdiction,” states

Sec. 1.(a) Except when the child may be excluded from a hearing under IC 31-6-7-10, the child is entitled:

- (1) to cross-examine witnesses;
  - (2) to obtain witnesses or tangible evidence by compulsory process; and
  - (3) to introduce evidence on his own behalf.
- (b) A child charged with a delinquent act is also entitled to:
- (1) be represented by counsel under IC 31-6-7-2;
  - (2) refrain from testifying against himself; and
  - (3) confront witnesses.

As added by Acts 1978, P.L. 136, SEC. 1. Amended by Acts 1979, P.L. 276, SEC. 7.

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### **Yes, juvenile offenders should have the same rights as adult offenders under the Indiana Bill of Rights.**

#### **1. Freedom is not restricted by age.**

When an individual of any age faces a serious court proceeding, his rights should be protected by the state. Constitutional guarantees are just that—guarantees. Age is an artificial determinant of when those rights and guarantees should apply to the individual.

#### **2. The Bill of Rights of the U.S. Constitution guarantees freedoms and protections to U.S. citizens.**

The due process amendments were established to safeguard the citizen. The rights in the Fifth, Sixth, and Seventh Amendments are not restricted by age.

#### **3. Individual rights should be preserved.**

If anyone's rights are abridged, we are all at risk of losing our rights and our liberty. Juveniles are citizens of the state, entitled to the protection thereof. The state should not overprotect the juvenile by not allowing constitutional guarantees. Juvenile justice should indeed be **just**.

#### **4. Juvenile offenders, like adults, must assume responsibility for their acts.**

Statistics show that serious juvenile crime is on the increase. Justice for juveniles under the current system is at risk. The safety of victims and society as a result of protection of juvenile offenders is also at risk. Regardless of age, we must assume responsibility for illegal acts as we demand our constitutional rights.

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### **The Arguments Pro and Con**

#### **Some Pro Positions**

## Some Con Positions

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### **No, juvenile offenders should not have the same rights as adult offenders under the Indiana Bill of Rights.**

1. Juveniles are our children, our future, and must be protected.

The juvenile courts should serve to protect our children and teach them right from wrong, as these courts were originally intended to do. Children who commit offenses obviously need help. It is our duty to lead them into the future, our future, not to punish them and create criminals.

2. If we mandate equal rights for juveniles, the whole justice system would have to be overhauled to comply.

Some offenses are age-related; they are a crime when committed by a juvenile, but not a crime when committed by an adult. A double standard currently exists to protect the youthful offender. Are we ready to make the commitment of time, energies, and resources to create true equality under the law?

3. A youthful offender reaches adulthood without a record.

The current system allows a youth's records virtually to be erased when reaching the age of majority so that there is a clean slate as an adult. Loss of this practice, if true equality were to exist between the juvenile and adult offender, would create other difficulties.

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## Bibliography

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- Constitution of Indiana, *Indiana Code*, Vol. 1, pp. 1-31 (Indianapolis, 1988).
- Constitution of the United States.
- *Indiana Code* 31-6-3-1.
- Kadish, Sanford H., ed. *Encyclopedia of Crime and Justice*. New York: Free Press, 1983. S.v. "Juvenile Justice."
- Karlsberg, Elizabeth. "The Case for Teen Rights." *Teen Magazine*. Vol. 34, No. 11, November 1990.
- "Kids, Crime and Punishment," *U.S. News and World Report*. Vol. 103, No. 8, August 24, 1987.

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## Some Relevant Court Cases

- *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839).
- *People ex rel. O'Connell v. Turner*, 55 ILL. 280 (1870).
- *In re Ferrier*, 103 ILL 367 (1882).
- *Commonwealth v. Fisher*, 213 Pa. 48 (1905).
- *In re Gault*, 387 U.S. 1 (1967) discussed in this essay.
- *In re Winship*, 397 U.S. 358 (1970)—“beyond a reasonable doubt” standard of proof necessary in adjudicatory phase of juvenile procedures.
- *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)—due process guarantees do not require a trial by jury for juveniles.
- *Breed v. Jones*, 421 U.S. 519 (1975)—double jeopardy protections apply to juveniles.
- Public Law 93-415, 88 [U.S.] Statutes 1109, “Juvenile Justice and Delinquency Prevention Act of 1974.”
- *In the Matter of Jennings*, 375 N.E.2d 258 (1978) held that juveniles are entitled to “due process” and “fair treatment” though they may not be entitled to all constitutional guarantees which are afforded to adult offenders.
- *Fare v. Michael C.*, 442 U.S. 707 (1979).
- *S. L. B. v. State of Indiana*, 434 N.E.2d 155 (1982) indicated that the standard for determining what due process requires in a particular juvenile proceeding is “fundamental fairness.”
- *Schall v. Martin*, 467 U.S. 253 (1984).

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## What Do You Think?

1. Should the principle of *parens patriae* apply to juveniles? Why/why not?
2. Should the state intervene in the care of children? Why/why not? If so, when?
3. Should age be a significant factor when determining criminal offenses? Why/why not?
4. What is adjudication? How does this apply to juvenile justice?

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## Continuing to Explore

1. Research the *Gault* (1967) case to learn the specifics of the case. Were Gault's rights violated? Why/Why not?
2. Why was the special distinction for juvenile justice created? What special problems have been created by this distinction?
3. When can a juvenile be tried as an adult in a court of law? What happens when that decision is made?
4. Research the social reformer Jane Addams to find out her beliefs about juveniles and the court system.
5. Who has the responsibility to decide what a youth's legal rights are and how he or she should be treated? Does a body of case law exist?
6. Are attorneys trained and prepared to defend the youthful offender? Talk with attorneys and judges in your area.

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## For More Information

- Flowers, R. Barri. *The Adolescent Criminal: An Examination of Today's Juvenile Offender*. Jefferson, NC: McFarland & Company, Inc., 1990.

Explores the adolescent offender. Good chapter on juvenile justice with references to significant court cases. Excellent notes and bibliography. Specific, detailed juvenile court statistics and information.

- "Juvenile Justice: What Should We Do With Children Who Break the Law?" *Bill of Rights in Action*, Vol. 11, No. 2, Spring 1995.

This publication of the Constitutional Rights Foundation focuses on responses to crime in world history (transportation of criminals to Australia); current proposals for dealing with crime in the U.S. (what should we do about crime?); and in U.S. history (development of the juvenile justice system). There are topics for discussion and writing, a bibliography, and activities for each section.

- Kramer, Rita. *At a Tender Age: Violent Youth and Juvenile Justice*. New York: Henry Holt and Company, 1988.

Kramer reports on her three years observing the juvenile justice system in New York City. A down-to-earth view of children and those tasked with protecting them.

- Levy, Leonard W. *Encyclopedia of the American Constitution*. New York: Macmillan Publishing Company, 1986.

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- Schwartz, Ira M. *(In)Justice for Juveniles: Rethinking the Best Interests of the Child*. Lexington, MA: D. C. Heath and Company, 1989.

U.S. juvenile justice system during the last twenty years. Includes the history and facts on juvenile crime and politics with descriptions of the federal role and future prospects. Excellent notes and bibliography.